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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ENTRUST RETIREMENT TRUST XV, etc.,

Plaintiff,

v.

DONNER CREEK VILLAGE
CONDOMINIUM ASSOCIATION, et al.,

Defendants.

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COUNSEL/PARTIES OF RECORD	
FEB 15 2018	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

Case No.: 3:17-cv-00490-LRH-VPC

UNOPPOSED MOTION REQUESTING
EXCEPTION TO SETTLEMENT
CONFERENCE ATTENDANCE
REQUIREMENT

I. INTRODUCTION

A settlement conference in this case is scheduled for February 26, 2018, at 9:00 a.m. before United States Magistrate Judge Valerie P. Cooke. The Order (#27) setting the settlement conference provides:

Unless excused by order of the court, clients or client representatives with complete authority to negotiate and consummate a settlement shall be in attendance at the settlement conference. This requires the presence of the client or if a corporate, governmental, or other organizational entity, an authorized representative of the client.

For a defendant, such representative must have final settlement authority to commit the organization to pay, in the representative's own discretion, a settlement up to the plaintiff's prayer, or up to the plaintiff's last demand, whichever is lower.

(Underscore text in original.)

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1 Defendant U.S. Department of Housing and Urban Development (“HUD”) requests that
2 the Court authorize Assistant United States Attorney (“AUSA”) Greg Addington to participate in
3 the settlement conference in person, along with HUD agency counsel as the settlement
4 representatives for HUD. In addition to AUSA Addington and HUD agency counsel being
5 personally present at the settlement conference, HUD program officials with pertinent
6 responsibilities for oversight of HUD programs will be available by telephone throughout the
7 duration of the settlement conference.¹

8 Counsel for the two other parties in this action (James M. Walsh and Christopher Lund)
9 have each stated they have **no objection** to the relief requested herein.

10 **II. ARGUMENT**

11 **A. Applicable Case Law**

12 The United States Supreme Court has stated that the federal Government is unlike any
13 other civil litigant:

14 We have long recognized that the Government is not in a position identical to that
15 of a private litigant, both because of the geographic breadth of government
16 litigation and also, most importantly, because of the nature of the issues the
17 government litigates. It is not open to serious dispute that the government is a party
to a far greater number of cases on a nationwide basis than even the most litigious
private entity.

18 *United States v. Mendoza*, 464 U.S. 154, 159 (1984) (internal citation omitted).

19 Because the Government handles a very large number of civil cases, it would be
20 impractical, if not physically impossible, for those Government officials with settlement authority
21 for the full claim amount to prepare for and appear at all settlement conferences. *United States v.*
22 *U.S. Dist. Court*, 694 F.3d 1051, 1059 (9th Cir. 2012) (district court abused its discretion in
23 ordering a Government representative with full settlement authority to appear in person for a
24 settlement conference). The Advisory Committee notes that accompany the 1993 amendments to

25
26 ¹ Final approval of travel funds for HUD counsel to travel from San Francisco to Reno has not
been obtained as yet; however, final approval has been requested and is expected.

1 Federal Rule of Civil Procedure 16 acknowledge the unique position of the Government in that
2 regard:

3 Particularly in litigation in which governmental agencies . . . are involved, there
4 may be no one with on-the-spot settlement authority, and *the most that should be*
5 *expected is access to a person who would have a major role* in submitting a
recommendation to the body or board with ultimate decision-making responsibility.

6 *Id.* at 1060 (italics added).

7 The Government delegates settlement authority to select individuals in order to promote
8 centralized decision-making. *Id.* at 1059. Centralized decision-making promotes three important
9 Government objectives. *Id.* at 1060. First, it allows the Government to act consistently in
10 important cases. *Id.* Second, it allows the Executive Branch to pursue policy goals more
11 effectively by placing ultimate authority in the hands of a few designated officials. *Id.* Third, by
12 giving authority to high-ranking officials, centralized decision-making better promotes political
13 accountability. *Id.*

14 In light of those principles, the Ninth Circuit has determined that the courts should adopt
15 a “practical approach” in assessing the need for a Government representative with full settlement
16 authority to attend a pretrial conference. *Id.* at 1061. In the Ninth Circuit’s view, the courts should
17 consider less drastic steps, such as telephonic participation, before requiring in-person
18 participation. *Id.* Only as a “last resort” should the District Court require an official with full
19 settlement authority to participate in a pretrial conference in person. *Id.*

20 **B. Discussion**

21 This is a “quiet title” action brought by Plaintiff against HUD seeking a judgment
22 regarding a property interest asserted by HUD to a condominium unit in Reno, Nevada. Broadly
23 speaking, Plaintiff alleges HUD did not properly exercise its redemption rights following a
24 foreclosure sale of the property and, consequently, HUD has no existing interest in the property.
25 HUD claims that it exercised its redemption rights in accordance with the operative statute and,
26 consequently, Plaintiff’s property interest was extinguished.

1 Although this is a “quiet title” action against HUD and no monetary judgment is sought
 2 against HUD, it is likely that any negotiated settlement would have some monetary component
 3 given the competing interests in the subject property. From HUD’s perspective, a monetary
 4 component to any proposed settlement (whether paid *by* HUD or paid *to* HUD) would implicate
 5 one or more HUD-administered programs concerning HUD-managed properties, HUD-
 6 administered mortgage interests, and/or HUD-managed property disposition functions. These
 7 varied HUD program functions are conducted and managed by different HUD officials exercising
 8 their program responsibilities in accordance with their respective program priorities. It is simply
 9 not feasible, however, for all of these HUD program officials to attend the settlement conference
 10 on the off-chance a settlement proposal might implicate the HUD program within their individual
 11 area of responsibility.

12 AUSAs routinely participate in settlement conferences in this district as sole settlement
 13 representatives for the United States and federal agencies. In fact, the Department of Justice
 14 (including the U.S. Attorney’s Office) has utilized this approach with much success for many
 15 years and, as a result, hundreds of cases involving the United States and federal agencies have
 16 settled.

17 HUD recognizes the important role settlement conferences play in civil litigation and the
 18 need for meaningful participation in those conferences. Counsel for HUD routinely participates
 19 in such conferences conducted by this Court without the presence of high-ranking agency
 20 officials. It would be unduly burdensome to require multiple agency personnel to attend the
 21 settlement conference when HUD agency counsel (from San Francisco) and the assigned AUSA
 22 will have thoroughly evaluated the case in advance of the settlement conference and consulted
 23 with the agency personnel whose program responsibilities will be most likely implicated by any
 24 proposed settlement.

25 Accordingly, HUD respectfully requests that the Court authorize AUSA Greg Addington
 26 to participate in the February 26, 2018, settlement conference in person, along with HUD agency

counsel as the settlement representatives for HUD. In addition to AUSA Addington and HUD agency counsel being personally present at the settlement conference, HUD program officials with pertinent responsibilities for oversight of HUD programs will be available by telephone throughout the duration of the settlement conference. This motion is **unopposed**.

III. CONCLUSION

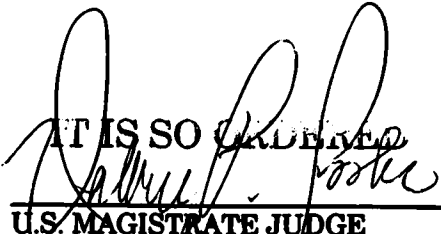
For the reasons discussed above, HUD respectfully requests that the Court permit AUSA Greg Addington to participate in the settlement conference scheduled for February 26, 2018, in person, along with HUD agency counsel as the settlement representatives for HUD. In addition to AUSA Addington and HUD agency counsel being personally present at the settlement conference,² HUD program officials with pertinent responsibilities for oversight of HUD programs will be available by telephone throughout the duration of the settlement conference.

DATED: February 14, 2018.

Respectfully submitted,

DAYLE ELIESON
United States Attorney

s/ Greg Addington
GREG ADDINGTON
Assistant United States Attorney

IT IS SO ORDERED

U.S. MAGISTRATE JUDGE
DATED: February 15, 2018

² See n.1, *supra*.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing UNOPPOSED MOTION REQUESTING
EXCEPTION TO SETTLEMENT CONFERENCE ATTENDANCE REQUIREMENT was
made to all parties through the Court's CM/ECF service and notification system.

DATED: February 14, 2018.

s/ Greg Addington
GREG ADDINGTON